

LEWIS  
ANDROCA  
LLP

L A W Y E R S

E-Filed on 3/23/07

3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169-5996  
Facsimile (702) 949-8321  
Telephone (702) 949-8320

Susan M. Freeman AZ State Bar No. 004199  
Email: sfreeman@lrlaw.com  
Rob Charles NV State Bar No. 006593  
Email: rcharles@lrlaw.com

Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,  
USA CAPITAL REALTY ADVISORS, LLC,  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
USA SECURITIES, LLC,

Debtors.

**Affects:**

- All Debtors
- × USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

**OMNIBUS OBJECTION OF THE USACM  
LIQUIDATING TRUST TO CLAIMS  
ASSERTING ADMINISTRATIVE EXPENSE  
STATUS**

Hearing Date: April 26, 2007  
Hearing Time: 9:30 a.m.

The USACM Liquidating Trust (the “USACM Trust”) hereby files its Omnibus Objection to Claims Asserting Administrative Expense Status (“Objection”) and moves this Court, pursuant to section 502 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an order denying administrative expense status to three alleged administrative expense Claims asserting Claims against USA Commercial Mortgage Company (“USACM”) that aggregate over \$95,000. The USACM Trust is not, by this filing, objecting at this time to any of the claims as unsecured claims, but reserves the right to do

1 so. This Objection is supported by the Court's record and explained in the following  
2 Memorandum.

### 3 **I. JURISDICTION**

4 1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334  
5 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
6 proceeding under 28 U.S.C. § 157(b)(2)(B).

7 2. The statutory predicate for the relief requested herein are 11 U.S.C. § 502  
8 and Bankruptcy Rule 3007.

### 9 **II. BACKGROUND**

10 1. On April 13, 2006 ("Petition Date"), USACM, USA Securities, LLC ("USA  
11 Securities"), USA Capital Realty Advisors, LLC ("USA Realty"), USA Capital  
12 Diversified Trust Deed Fund, LLC ("DTDF"), USA Capital First Trust Deed Fund, LLC  
13 ("FTDF" and together with DTDF, the "Funds") (collectively the "Debtors"), filed  
14 voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors  
15 continued to operate their businesses, if any, as debtors-in-possession pursuant to sections  
16 1107(a) and 1108 of the Bankruptcy Code. Post-petition management of the Debtors was  
17 under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
18 ("Mesirow"), who serves as the Chief Restructuring Officer.

19 2. USACM is a Nevada Corporation that, prior to the Petition Date, was in the  
20 business of underwriting, originating, brokering, funding and servicing commercial loans  
21 primarily secured by real estate, both on behalf of investors and for its own account.  
22

23 3. This business included the solicitation of individual investors to purchase  
24 fractional interest in loans that USACM originated and then serviced. These investors,  
25 totaling approximately 3,600 as of the Petition Date, are referred to as "Direct Lenders" in  
26 USACM's bankruptcy case and in this Objection.

1           4.     Although USACM serviced and sometimes originated the loans in which the  
2 Direct Lenders invested, USACM was not a borrower on these loans.

3           5.     On September 14, 2006, the Court entered its Order Setting Deadline to File  
4 Proofs of Claim and Proofs of Interest (the "Bar Date Order") [Docket No. 1280]. The  
5 Bar Date Order established 5:00 p.m., prevailing Pacific Time, on November 13, 2006, as  
6 the deadline ("Bar Date") for creditors to file proof of claims

7           6.     On September 25, 2006, the Debtors served a copy of the Bar Date Order on  
8 their service lists [Docket No. 1358]. All Direct Lenders were served with a copy of the  
9 Bar Date order as well [Docket No. 1358].

10          7.     On November 6, 2006, a stipulation was filed and an order entered extending  
11 the Bar Date for Direct Lenders only to file proofs of claim until January 13, 2007 [Docket  
12 No. 1729].

13          8.     On January 8, 2007, this Court entered its Order Confirming the "Debtors'  
14 Third Amended Joint Chapter 11 Plan of Reorganization" [Docket No. 2376].

15          9.     Debtors' Third Amended Chapter 11 Plan of Reorganization (the "Plan")  
16 [Docket No. 1799] provides the following deadlines for objections to Claims:

17               (A)   for any and all Claims and Equity Interests to which the  
18 General Bar Date applies, ninety (90) days after the Effective Date; (B) for  
19 any and all Claims to which the Administrative Claims Bar Date or the  
20 Professionals Administrative Bar Date applies, thirty (30) days after the  
21 expiration of the respective Bar Date; and (C) for any and all Claims to  
22 which the Bar Date applicable under section B.3 of Art. V of the Plan  
23 applies, thirty (30) days after the expiration of that Bar Date.

24          10.    USACM's claims and noticing agent received approximately 2,436 proofs of  
25 claim as of the January 13, 2007 Bar Date, asserting claims totaling more than  
26 \$997,000,000, plus unknown amounts based on unliquidated Claims.

          11.    Under the Plan, the USACM Trust is the successor to USACM with respect  
to standing to seek allowance and disallowance of Claims.

12. The USACM Trust exists as of the Effective Date of the Plan, which was March 12, 2007. Geoffrey L. Berman is the Trustee.

13. Three Claims filed against USACM assert administrative expense status (the “Administrative Expense Claims”). They are as follows:

<u>Claimant</u>	<u>Case Number</u>	<u>Proof of Claim Number</u>	<u>Date Claim Filed</u>	<u>Proof of Claim Amount</u>
CDW Computer Centers Inc Receivable Management Services Phyllis A Hayes PO BOX 5126 Timonium, MD 21094-5126	06-10725	10725-00003	5/4/2006	\$1,381.30
Gould Patterson Ales & Day 4496 S Pecos Rd Las Vegas, NV 89121-5030	06-10725	10725-00761	11/9/2006	\$79,372.96
National City Commercial Capital Corp fka Information Leasing Corporation Lisa M. Moore 995 Dalton Ave Cincinnati, OH 45203	06-10725	10725-01656	11/30/2006	\$14,247.78

14. The USACM Trust contends that these Claims are not entitled to administrative expense status and they should be classified as general unsecured Claims.

### **III. APPLICABLE AUTHORITY**

1. Under the Bankruptcy Code, any Claim for which a proof of claim has been filed will be allowed unless a party in interest objects. If a party in interest objects to the proof of claim, the Court, after notice and hearing, shall determine the amount of the Claim and shall allow the Claim except to the extent that the Claim is “unenforceable against the debtor . . . under any . . . applicable law for a reason other than because such claim is contingent or unmatured.” 11 U.S.C. § 502(b).

2. The USACM Trust is entitled to object to proofs of claim under 11 U.S.C.

§ 502(a). This objection is timely under the confirmed Plan.

3. A properly filed proof of claim is presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof of claim controverts the presumption, the creditor ultimately bears the burden of persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (B.A.P. 9<sup>th</sup> Cir. 1995), *aff'd*, 91 F.3d 151 (9<sup>th</sup> Cir. 1996). The ultimate burden of proof as to the validity of a proof of claim “remains at all times upon the claimant.” *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035, 1039 (9<sup>th</sup> Cir. 2000).

#### IV. OBJECTIONS TO CLAIMS

1. As more particularly described herein, the USACM Trust seeks in this Objection the reclassification of the Administrative Expense Claims as general unsecured Claims.

2. These Claims may be the subject of multiple objections herein for any of the reasons stated in this Objection. These Claims may also be subject to prior or subsequently filed objections.

3. The USACM Trust reserves the right to further object to any and all Claims, whether or not the subject of this Objection, for allowance and/or distribution purposes on any other grounds. The USACM Trust further reserves the right to modify, supplement and/or amend this Objection as it pertains to any Claim or claimant herein.

4. The Administrative Expense Claims are set forth above. The USACM Trust objects to these Claims on the basis that they are not entitled to administrative expense status and contends that they should be classified as general unsecured Claims.

5. Section 503(b) of the Bankruptcy Code states that “[a]fter notice and a hearing, there shall be allowed, administrative expenses . . . including. . . .” Section 503(b) then proceeds to list of a number of expenses that qualify for administrative status. None of the Administrative Expense Claims were the subject of notice and a hearing to

1 determine their administrative status. Furthermore, none of the Administrative Expense  
2 Claims are the kind of expense that generally qualifies as administrative under section  
3 503(b), and the claimants submitted no evidence in support of their alleged status.  
4 Therefore, the Administrative Expense Claims should be denied status as administrative  
5 expenses Claims and should be classified instead as general unsecured Claims, subject to  
6 further objection.

7  
8 **V. CONCLUSION**

9 For the reasons discussed above, the USACM Trust objects to the administrative  
10 expense status asserted in the proofs of claim set forth above and requests that the Court  
11 reclassify these claims as general unsecured Claims (albeit subject to possible additional  
12 objections). The USACM Trust also requests such other and further relief as is just and  
13 proper.

14 Dated: March 23, 2007.

15 **LEWIS AND ROCA LLP**

16  
17 By: /s/ RC (#6593)

18 Susan M. Freeman, AZ 4199 (*pro hac vice*)

19 Rob Charles, NV 6593

20 3993 Howard Hughes Parkway, Suite 600

21 Las Vegas, Nevada 89169-5996

22 Facsimile (702) 949-8321

23 Telephone (702) 949-8320

24 Email: RCharles@LRLaw.com

25 *Counsel for USACM Liquidating Trust*  
26